

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

October 26, 2004

In Reply Refer To:
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In re: KBCV(AM), Hollister, MO
Facility ID No. 129517
File No. BNP-20001023ACS

Dear Counsel:

This letter concerns the uncontested request filed on September 14, 2004 (“Request”), and amended on October 5, 2004 (“Amendment 1”) and again on October 19, 2004 (“Amendment 2”), on behalf of Bott Communications, Inc. (“Bott”), to treat the referenced construction permit’s construction period as encumbered pursuant to the Commission’s construction period tolling rule, 47 C.F.R. § 73.3598(b). For the reasons detailed below, we will deny Bott’s request for tolling but grant the request when treated as one for waiver of the construction period rule, 47 C.F.R. § 73.3598(a).

Background. On February 5, 2002, the staff granted Bott’s application to construct a new AM station to serve Hollister, Missouri, on 1570 kHz. The grant required that Bott complete construction and file its covering broadcast license application by February 5, 2005. Bott states that it could not build the authorized facilities because of an objection filed by the United Mexican States Office of Communications & Transportation (“Mexico”) on February 17, 2003, more than a year after the permit was granted.¹ Bott indicates that it did not receive notice of the Mexican objection until July 10, 2003.² Bott seeks tolling effective February 17, 2003, the date of the Mexican objection.

Discussion. The Commission recognizes that construction may be tolled during the permit’s three-year span by certain well-defined criteria (administrative review of a

¹ The Mexican authorities approved Bott’s authorized daytime service but objected to Bott’s nighttime service because of interference concerns with respect to XERF, a Class A AM station in Ciudad Acuna, Coahuila, Mexico.

² *Amendment* at 1.

petition for reconsideration or application for review of the grant of the initial permit; judicial review by a court of competent jurisdiction of any matter pertaining to the construction and operation of the proposed station, a condition precedent preventing timely completion of construction, and weather-related acts of God (hurricane, tornado, earthquake, etc.).³ Notifications of tolling treatment pursuant to these criteria must be filed with the Commission within thirty days of the event allegedly encumbering construction.⁴

While a post grant objection invoking an international agreement does not satisfy our tolling criteria, the Commission recognizes that there may be “rare and exceptional circumstances” beyond a permittee’s control which warrant waiver of our construction period rule.⁵ Requests for waiver of the construction period rule should be filed within 30 days of the event encumbering construction.⁶ While the “event” occurred on February 17, 2003, Bott could not file its request by March 17, 2003, because it was not apprised of the Mexican objection, one filed in the course of normal communications between the U.S. and Mexican governments, until July 10, 2003.⁷ Given this set of circumstances, Bott should have filed its request no later than August 10, 2003.

An international objection to construction of facilities that the Commission has already authorized is rare. Such encumbrances are exceedingly unusual for a station located in Missouri, distant from international borders. Further, Bott diligently took steps to resolve this matter, immediately considering ways to eliminate the Mexican concerns and filing a modification application less than three months after being informed of the Mexican objection. Bott also responded promptly to the staff’s requests to amend this application to bring the proposal into compliance with international agreements. Bott indicates that it did not request either tolling or waiver of its construction period at that time because it was concentrating its efforts on the modification application as the solution and expected that the modification application would be approved in sufficient time to complete construction.⁸ When Bott learned on September 13, 2004, that Mexico had objected to its modification application, Bott filed the instant request the next day.

Given the totality of circumstances identified above, and Bott’s timely and diligent responses, we find that Bott has demonstrated sufficient grounds for waiver of the construction period rule and of the requirement that such requests be filed within 30 days of the precipitating event. Accordingly, the request filed by Bott Communications,

³ 1998 Biennial Regulatory Review – *Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 23056, 23091 (1998), *recons. granted in part and denied in part* 14 FCC Rcd 17525, 17540 (1999) (“*Streamlining MO&O*”).

⁴ See 47 C.F.R. § 73.3598(c).

⁵ *Streamlining MO&O*, 14 FCC Rcd at 17541.

⁶ *Birach Broadcasting Corporation*, 18 FCC Rcd 1414, 1416 (2003).

⁷ *Request* at 2.

⁸ See *Amendment 2*.

Inc., when treated as a request for waiver of the Commission's construction period, IS GRANTED. The referenced permit will remain in an encumbered posture until action on Bott's modification application BMP-20031003ABJ or six months from the date of this letter, whichever is shorter. Bott must inform us promptly upon action on its modification application or, if the matter has not been resolved within six months, file an additional waiver request updating the progress of its modification application. Upon action on the modification application, we will modify the Commission's records to provide Bott with the 23 months/18 days remaining in its construction period.⁹

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁹ The referenced permit was unencumbered for a 12 month/12 day period (February 5, 2002 – February 17, 2003), *i.e.*, there were 23 months/18 days of unencumbered construction time remaining when the Mexican objection to the permit was filed.